

REMARKS

The April 18, 2005 Office Action has been reviewed and its content carefully noted. Favorable reconsideration of this case is respectfully requested. Claims 1 through 6 are currently pending and under examination.

Claim Rejections – 35 U.S.C. §103(a)**A. US 4,283,436 to Soeters et al. in view of Minifie**

The Examiner has rejected claims 1 and 3-6 under 35 U.S.C. §103(a) as being unpatentable over Soeters et al. in view of Minifie. The Examiner bases this rejection upon its assertions that (1) one of ordinary skill in the art would expect that the crystals in Soeters are at a temperature below the melting point of chocolate because they are crystals and not liquid (April 18, 2005 Office Action at page 3, lines 5-7); and (2) Minifie teaches that chocolate may be seeded with solid chocolate shavings mixed into liquid chocolate at a temperature of 32-33 C. (April 18, 2005 Office Action at page 3, lines 10-12).

Applicants respectfully point out that MPEP §2143 provides

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Thus, Applicants respectfully traverse the Examiner's rejection. There is no teaching or suggestion in the Soeters and Minifie references to arrive at the claimed invention.

First, Soeters does not teach or suggest mixing a liquid chocolate mass with a liquid seed material comprising cooled mixture obtained from allowing the mixture to cool to a first

temperature below the melting temperature of chocolate. Column 14, lines 20-21 of the Soeters reference discloses seeding of the chocolate mass with “stabilized crystals from the original pre-conched mass”. However, Claim 1 of the present application expressly provides that the liquid seed material added to the liquid chocolate mass in step 1. b) is in fact comprised of cooled mixture from step 1. c) of Claim 1—that is, material that has already been conched, tempered and cooled to a second temperature between the first temperature and the critical temperature prior to use as liquid seed material.

Soeters discloses only seeding of a conched liquid chocolate mass with crystals from the original pre-conched mass. *See* Soeters at Column 13, lines 44-45 (“The starting materials consist of a pre-conched masses of the following compositions, refined to a particle size of 15 microns”); Column 14, lines 8-10 (“The masses are blended in a Hobart mixer until homogenous, and conched prior to tempering”); and Column 14, lines 18-20 (“When the whole mass has reached 30 C., which takes 30-35 minutes, it is seeded with 0.1% of stabilized crystals from the original pre-conched mass”). The current application teaches use of liquid seed material that has been conched, tempered and then cooled. Since Soeters teaches use of material (pre-conched crystals) that has not been conched, tempered and then cooled, Soeters does not teach or suggest the claim limitation of utilizing a liquid seed material as that limitation appears in the claims of the present application. Claims 1-6 of the present application are not obvious in view of Soeters. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Second, Soeters in view of Minifie fails to teach or suggest the seed material used being at a temperature above 30°C. Minifie contemplates the use of solid chocolate shavings which are mixed into liquid chocolate at 32-33 C. (*See* Minifie at page 147, lines 21-22). However, the Applicants respectfully point out that it is the liquid chocolate mass itself, and not the solid

chocolate shavings, that is maintained at 32-33 C during the process of admixing seeding material with liquid chocolate mass in the Minifie reference. Indeed, Minifie contemplates the use of either solid chocolate shavings (see above) or cold water-jacketed tempering tanks that produce seeds by virtue of the contact of unseeded liquid chocolate mass with the cool surface of the tempering tank (*see* Minifie at page 146, lines 1-4). Minifie thus does not teach the use of liquid seeding material as produced in step 1 of pending Claim 1, and further does not teach the temperature of a liquid seeding material introduced into a liquid chocolate mass. Since Minifie and Soeters in combination do not teach the limitation of liquid seeding material as claimed in the above-captioned application, Applicant respectfully requests that this rejection be withdrawn.

Applicant respectfully submits that this application is in condition for allowance. Early and favorable action is earnestly solicited. If any additional fee is due, the amount of such fee may be charged to Deposit Account No. 50-1145.

Respectfully submitted,



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